

**1. General**

The following conditions issued by Intercast UK Ltd., (the Seller), apply to any contract of which these conditions form part to the exclusion of any conditions of order or purchase of the buyer or any other standards, specifications or conditions of particulars of or adopted by the buyer, unless expressly accepted in writing by the Seller as part of the contract.

"Goods" means the subject matter of the contract (but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities etc, and whether one or a number of items, whether or not identical or similar. These conditions apply to all services provided by the Seller in the same way as they apply to Goods supplied by the Seller.

**2. Quotations**

Quotations do not constitute an offer by the Seller to supply the Goods or carry out the work referred to therein and no order placed in response to a quotation will be binding unless accepted by the Company in writing whereupon these conditions shall be deemed to be incorporated in the contract. All such acceptances by the Company will be subject to the availability of the necessary materials and to the buyer being able to provide any necessary authorisation and or licences and the same remaining valid.

**3. Price**

Where the Goods are sold by reference to the Sellers published price list, the price payable for the Goods shall be the ruling price as published in the price list current at the date of despatch of the Goods from the Seller's works.

In other cases the price stated in the contract is based on the cost to the Seller of materials, fuel and power, transport and labour at the date of acceptance of the order. If at the date of despatch of the Goods from the Seller's works (or in the case of services the date of provision of the service) there has been an increase in any or all such costs, the price payable for the Goods may at the option of the Seller be increased accordingly.

Where the price of the goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.

There shall be added to the price for the Goods any Value Added Tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods (whether initially charged on or payable by the Seller or the Buyer).

The price includes packing and delivery to the agreed destination. If any other commercial terms are agreed they shall be expressly provided for in the contract.

The Seller uses all reasonable endeavours to ensure, where necessary the suitability of packing, but no claim will be accepted for damage in transit on the grounds of alleged unsuitability of packing.

All prices are quoted in pounds sterling unless otherwise specified and all payments must be made in pounds sterling unless expressly agreed.

**4. Terms of Payment**

Prices quoted are net. Subject to credit being approved accounts are due for payment no later than 30 calendar days from the date of invoice: otherwise the payment must be received by the Seller before despatch from the Seller's works. All payments will be made without deduction. When deliveries are spread over a period each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. Failure to pay for any Goods for any delivery or any instalment shall entitle the Seller to suspend further deliveries and work both on the same order and any other from the Buyer without prejudice to any other right the Seller may have. The Seller also reserves the right to charge interest on overdue accounts at the rate of 3% per month. The Seller reserves the right where genuine doubt arise as to a Buyer's financial position or in the case of failure to pay for any Goods or any delivery or instalment as aforesaid to suspend work on and delivery on any order or part of instalment without liability until payment of satisfactory security for payment has been provided.

In the case of payment FOB United Kingdom port, unless otherwise agreed, the Buyer upon request by the Seller nominate a vessel willing to receive the Goods. Failing such a nomination within thirty (30) days (or such longer period as may be agreed by the Seller) the Seller shall be entitled to require immediate payment for the Goods and to place the Goods in store at the risk and expense of the Buyer.

If the contract stipulates that payment is made by letter of credit it shall be an express condition of the contract that the letter of credit is irrevocable and is drawn on or confirmed by a first class United Kingdom counter and all the appropriate documentation is presented to the Seller when requested by the Seller or otherwise in accordance with the contract.

**5. Delivery and Completion Dates.**

The delivery or performance dates specified in the contract are approximate and only, unless otherwise expressly stated, time is not the essence of delivery.

The Seller shall not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver if the duration of the delay is not substantial or failure is due to an Act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Sellers premises or elsewhere) hostilities, breakdown, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) export or import restrictions (whether or not existing at the date of contract) or any other cause whatever beyond the Seller's control or of an unexpected or exceptional nature.

No delay shall entitle the Buyer to reject any delivery or any further instalment or part of the order or any other order from the Buyer or to repudiate the contract or the order.

The Seller cannot undertake to meet any schedule of the Buyer's requirements supplied after the date of the contract and will have no liability whatever for delaying meeting or failure to meet all or any such requirements (however such failure or delay may arise) unless and to the extent that the Seller expressly agrees to meet such requirements, in which event paragraph (b) of this Condition will apply.

**6. Delayed Acceptance**

If for any reason the Buyer is liable to accept delivery of the Goods when the Goods are due and ready for delivery the Seller shall be entitled to invoice the Buyer for the Goods and may arrange storage of the Goods and the Buyer shall be liable to the Seller for all reasonable costs (including insurance) incurred by the Seller. This provision is without prejudice to any other right which the Seller may have in respect of the Buyer's failure to take delivery of the Goods or to pay for them in accordance with the contract.

**7. Passing of Title and Risk**

The risk for the goods shall pass to the Buyer: aa) unless the contract otherwise stipulates when the goods are received onto the Buyers premises. The seller accepts no responsibility for loss or damage during unloading or movement of Goods on the Buyers premises or at the premises whilst the goods are being unloaded to the aforesaid premises. bb) if the goods are appropriated to the Buyer but kept at the Supplier's premises upon collection of the Goods by the Buyer or upon the expiry of seven (7) days from the Seller's written notice to the Buyer that such Goods are ready for delivery whichever is the earlier.

Notwithstanding sub-clause a) above absolute property in and title to the Goods shall remain vested in the Seller and the Buyer will keep the Goods as bailee and trustee for the Seller (returning the same to the Seller upon request) until the price thereof has been paid in full together with any interest and all other sums due in respect thereof from the Buyer in accordance with the order and until payment in full has been received by the Seller for any other Goods supplied by the Seller and any other monies due from the Buyer to the Seller on any account.

Pending payment for Goods as aforesaid the Buyer shall not mix or incorporate the Goods with any other goods and shall keep the Goods suitably marked or otherwise plainly identified that they are the property of the Seller.

Pending payment for the Goods as aforesaid the Buyer shall store them separately in such a way that they can be identified as the property of the Seller, and the Seller shall be entitled to direct the Buyer not to resell the same or move them from where they are located without consent. Any Goods in the Buyer's possession shall be presumed not to have been paid for unless the Buyer can prove otherwise and the Seller shall have the right to appropriate any payment made by the Buyer to any invoice or invoices (whether or not due at the time of payment) in the Seller's absolute discretion.

If payment for Goods aforesaid the Buyer shall sell or otherwise dispose of the Goods or make an insurance claim in respect thereof, the Buyer shall not give any warranties or incur any liabilities on behalf of the Seller and the proceeds of any such sale or other disposition (or claim hereto) or any such insurance proceeds (or claim thereto) shall belong to the Seller and be held by the Buyer as trust funds to the extent of all sums due to the Seller in respect of such Goods, and the Buyer shall pay such proceeds into a separate account.

At any time prior to full payment whether or not payment is then overdue (the Seller may) without prejudice to any of its other rights) retake possession of the Goods or any part thereof and may enter on the Buyer's premises by its employees or agents for that purpose or for the purpose of ascertaining whether the Buyer is complying with the provisions of this clause.

Any Goods repossessed by the Seller may be resold on such terms as the Seller may determine and the Buyer shall remain liable to the Seller for the difference between the net proceeds of such resale and all outstanding sums due to the seller in respect for such goods and all costs and expenses incurred by the Seller in repossessing, storing and reselling the same.

Nothing in this clause shall give the Buyer any right to return goods sold by the Seller and the Seller may sue the Buyer for the price when due (without prejudice to its other rights) notwithstanding the property therein may not have passed to the Buyer.

The Buyer's rights to use the Goods or to sell them prior to full payment may be determined forthwith by written notice given by the Seller to the Buyer and shall automatically terminate with or without such notice if a receiver is appointed over any of the assets of the undertaking of the Buyer or a winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (other than the purpose of solvent reconstruction or amalgamation) or calls a meeting of or makes any arrangement or composition with its creditors generally or commits any act of bankruptcy or allows execution or distress to be levied against its goods in the event of a Receiver or Liquidator of the Buyer being appointed, such Receiver or Liquidator shall pay into a separate bank account any sums received from third parties in respect of sales to them or Goods or Products by the Buyer up to the amount of any indebtedness of the Buyer to the Seller.

**8. Warranty Limit of Responsibility**

The Seller warrants that it will (at the Seller's choice) either repair or replace, or refund the full purchase price of any Goods that are accepted by the Seller as being defective or not in accordance with the contract or any express description or representation given or made on behalf of the Seller in respect of the goods within a period of six (6) months from despatch of such Goods from the Seller's works ("The Warranty Period"). The Buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not involving negligence on the part of the

Seller) shall in all cases be limited to repair or replacement of the Goods or to a refund of the purchase price of the Goods as aforesaid and any condition of warranty implied by law shall cease to apply after the expiry of the Warranty Period and the Seller shall not in any circumstances be liable to any damages, compensation, costs, expenses, losses, or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibitive by any rule of law. A claim in respect of any defect or failure to comply with the specification or order or in respect of any delivery or instalment of an order or any

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part thereof shall not entitle the Buyer to cancel or refuse delivery of or payment for any other order, delivery or instalment or any part of the same order, delivery or instalment. The Seller will require a reasonable period of time to carry out any repairs or replacements.

#### **9. Indemnity**

The Buyer agrees upon demand to indemnify the Seller against death or injury to persons or loss or damage to property or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto to the extent that same are caused by or are related to: defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in Goods produced by the Seller for the Buyer; or the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer; and designs, drawings, specifications given to the Seller by the Buyer in respect of Goods produced by the Seller for the Buyer. any act, neglect or breach of statutory duty done or committed by the Buyer, the Buyer's agents, servants or other contractors (not being employed by the Seller).

#### **10. Modifications**

Any extra work, requirement or modification in relation to the Goods which is expressly specified in the contract or which is expressly excluded by these conditions and which the Buyer requests shall, if the Seller is able and willing to agree thereto, be charged extra (including an appropriate allowance for profit) to the extent that such extra work, requirement increases the cost to the Seller of performance of the contract and the Seller shall be allowed a reasonable extension or postponement of performance or delivery dates required to comply with any such requests.

#### **11. Testing**

The Seller shall only be obliged to carry out tests which are specified in the contract, and reasonable excesses and deficiencies therefore shall be accepted by the Buyer who shall not be entitled to reject any Goods on the grounds that they are not precisely as specified. Tests and inspections shall take place under the Seller's standard testing arrangements. Any additional testing which the Seller expressly agrees to carry out for the Buyer shall be charged extra to the Buyer and shall be undertaken subject to these conditions. Where the Buyer requires to be present at any tests or inspections the Seller shall give the Buyer as much notice as reasonably possible of the date and time of such tests and inspections shall take place and if the Buyer or any third party fails to attend such tests and inspections the Seller shall be permitted to undertake such tests and inspections without liability to the Buyer and shall notify the results thereof to the Buyer who shall not be entitled to request further tests and inspections.

#### **12. Customer specifications**

The Seller is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Buyer to the Seller, whether written or verbal, in all respects, complete, accurate and entirely suitable for the Buyer's requirements. Unless otherwise expressly agreed, the Seller shall have no responsibility for the performance, suitability or durability of any Goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Buyer's designs, drawings, standards or specifications. The Seller will take all reasonable care of the Buyer's drawings, standards or specifications while in the Seller's possession but does not accept liability for loss or damage thereto howsoever arising, except where neglect on the part of the Seller or its agents was the direct cause of loss or damage and in those circumstances the Seller's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, liabilities and losses howsoever arising. The Seller reserves the right to destroy or otherwise dispose of drawings, standards or specifications or custody (whether or not the property of the Buyer) from which the Buyer has not required the Goods to be made for a period of twelve (12) months.

#### **13. Confidentiality & Patents**

Any drawings, specifications, other technical information, commercial information, sub-contract information supplied to the Buyer by the Seller in connection with the contract are provided on the express understanding that the Buyer will not disclose, give, loan, exhibit or sell such information to any third party and that the Buyer will not use them in any way except the connection with the Goods or services provided hereunder. Where the Buyer requires information of or from sub-contract sources used by the Seller in connection with the contract or for any other reason, the Buyer will be provided with such information on the express understanding that the Buyer will not contact or deal with in any way directly or by a third party without the written agreement of the Seller. The Buyer shall indemnify the Seller against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of patent, registered design, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Seller with the Buyer's specific requirements, designs or specifications.

#### **14. Loss or Damage in Transit**

The risk in the Goods passes to the Buyer when specified by clause seven above, and the Seller accepts no responsibility for any damage, shortage or loss in transit thereafter. Claims for any damage, shortage or loss in transit should be notified immediately by FAX, E mail or telephone, subsequently confirmed in writing to the Carrier and the Seller and the Carrier's conditions in relation to claims for damage, shortage or loss in transit. If the Carrier's conditions are not strictly complied with the Buyer will indemnify the Seller against all loss resulting therefrom.

#### **15. Sub-contracting**

The Seller reserves the right to sub-contract the whole or any part of the contract.

#### **16. Termination**

If the Buyer enters into a deed or arrangement or commits any act of bankruptcy or compounds with his creditors or if a receiving order is made against the Buyer or (being a company) it shall pass a resolution or the court shall make an order that the Buyer shall be wound up (otherwise than the purpose of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertakings of the Buyer or if the circumstances arise which entitle the Court or the Creditor to appoint a receiver (including an administrative receiver) or a manager which entitle the Court to make a winding up order or if the Buyer takes or suffers any similar action in consequence of debtor if the financial responsibility of the Buyer shall, in the opinion of the Seller, become impaired or if the Buyer shall commit any breach of any part of the contract the Seller may without prejudice to its rights and remedies hereunder stop all Goods in transit and suspend further production and deliveries and by notice in writing to the Buyer may forthwith determine the contract.

#### **17. Forbearance**

No forbearance or indulgence by the Seller shown or granted to the Buyer in respect of these conditions or otherwise shall in any way effect or prejudice the rights of the Seller against the Buyer or be regarded as a waiver of any of these conditions.

#### **18. Severance**

If any provision of the terms and conditions of the Contract is declared by any judicial or other competent authority to be void then the remaining terms and conditions of the contract shall not be affected by such declaration and shall remain in full force and effect.

#### **19. Assignments**

None of the rights of the Buyer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Seller.

#### **20. Applicable Law**

The contract shall in all respects be governed by and construed in accordance with English law and the Buyer hereby submitted to the non-exclusive jurisdiction of the English Courts.